THE HON'BLE SMT. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.19067 OF 2006

O R D E R (Per the Hon'ble Smt. Justice T.Meena Kumari)

Heard both the counsel.

2. Aggrieved by the order dated 23.12.2004 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad in O.A.No.6688 of 2001 in setting aside the charge memo issued to the respondent on the ground that the criminal case in C.C.No.752/2001 ended in acquittal and that the preliminary report of the Regional Joint Director of Medical and Health do not attribute against the respondent, the Government has filed the present writ petition.

3. The learned counsel appearing for the respondent submitted that the criminal case against the respondent in C.C.No.752/2001 on the file of Additional Judicial First Class Magizgtrate, Nizamabad ended in acquittal for the same charges and the preliminary report of the Regional Joint Director of Medical and Health attribute nothing against the respondent and, therefore, the Tribunal has quashed the charge memo. Relying on the judgment of the Apex Court reported in ***G.M.TANK v. STATE OF GUJARAT & ANR.***[1] he submitted that the Apex Court set aside the dismissal order of the delinquent therein, who was found guilty by the departmental enquiry and was acquitted by the criminal court where the acquittal was by way of complete exoneration and not by way of benefit of doubt on the same charges. Therefore, he contended that the Tribunal below has rightly set aside the charge memo and the writ petition is liable to be dismissed.

4. From the material available on record, it could be seen that the when the respondent was working as in-charge of Medical Stores of District Medical and Health Officer, Nizamabad, 7230 Pethidin Injections were found missing and the Regional Director of Medical and Health, Hyderabad as per the direction of the disciplinary authority i.e., the Director of Health, A.P.,

Hyderabad conducted preliminary enquiry and submitted report and based on the report, the Government framed charges against the respondent and others and the respondent was kept under suspension on 9.12.1999 and the Tribunal for Disciplinary Proceedings vide memo in T.E.C.No.17/2001 dated 28.2.2001 framed charges against the respondent alleging that by manipulating the record, the shortage has occurred. The criminal case in C.C.No.752/2001 on the file of Additional Judicial First Class Magistrate, Nizamabad against the respondent ended in acquittal.

5. It is well settled that mere acquittal in criminal case does not absolve the delinquent from the departmental proceedings. However, in the present case, the stage of the proceedings is at the framing of the charges based on the preliminary enquiry and, therefore, we do not find any justification on the part of the Tribunal in setting aside the charge memo based on the judgment in the criminal case and the preliminary enquiry report. In the judgment on the Apex Court relied on by the counsel for the respondent, the delinquent therein was found guilty in the departmental proceedings for illegally accumulating the excess income by way of gratification, and accordingly he was dismissed from service. For the same charge, he was exonerated by the criminal court by way of clean acquittal and the said judgment has become final, as no appeal was filed. Therefore, the Apex Court set aside the dismissal order, as there was no evidence against the delinquent therein to hold that he was guilty of the charges leveled therein. Coming to the case on hand, as noted above, the departmental proceedings have yet to be completed on the charge memo and the respondent has to prove his innocence. Therefore, the judgment relied on by the counsel for the respondent cannot be made applicable to the facts of the present case.

6. In view of the above facts and circumstances, the order of the Tribunal in setting the charge memo, is set aside and the writ petitioners are directed to conclude the disciplinary proceedings pursuant to the charge memo, within a period of four weeks from the date of receipt of a copy of this order.

7. The writ petition is accordingly allowed. No costs.

T.MEENA KUMARI,J

G.CHANDRAIAH,J

AVS
DATE:08.10.2007

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[1] 2006(4) Supreme 740